

- The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KIM C. SMITH, THEODORE DAVID,
MICHAEL MOSTYN and THOMAS A. KAYL

MAILED

PAT & T.M OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-0961
Application No. 09/421,580

ON BRIEF

Before THOMAS, HAIRSTON, and KRASS, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-7, 10-20, 23-33, 36-46, and 49-76.

The invention is directed to a navigation menu for use in graphical user interface (GUI). In particular, a three-dimensional

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display of menu options is displayed to a user, maximizing the use of a display's real estate by presenting all available options at once while presenting some options in a more pronounced manner.

Representative independent claim 1 is reproduced as follows:

1. A user interface comprising:

a display;

a cursor capable of being displayed on said display;

a cursor control device capable of controlling said cursor's position and movement on said display;

at least two selectable targets displayed on at least a portion of said display; and all of said at least two selectable targets displayed on said at least a portion of said display capable of being simultaneously displayed in a simulated rotation about an axis while each one of said all of said at least two selectable targets displayed on said at least a portion of said display remains continuously selectable during said simulated rotation.

The examiner relies on the following references:

Goh	5,678,015	Oct. 14, 1997
Nielsen	6,078,935	Jun. 20, 2000 (filed Mar. 15, 1999)

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Claims 1-3, 5-7, 10-16, 18-20, 23-29, 31-33, 36-42, 44-46, and 49-76 stand rejected under 35 U.S.C. § 102(b) as anticipated by Goh.

Claims 4, 17, 30, and 43 stand rejected under 35 U.S.C. § 103 as unpatentable over Goh in view of Nielsen.

Claims 8, 9, 21, 22, 34, 35, 47, and 48 have been indicated by the examiner as being directed to allowable subject matter and are not on appeal before us.

Reference is made to the supplemental brief¹ and answer for the respective positions of appellants and the examiner.

OPINION

Turning, first, to the rejection under 35 U.S.C. § 102(b), a rejection for anticipation under Section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

¹ We refer to this as the "brief."

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With regard to the independent claims 1, 14, 27, and 40, the examiner contends that Goh discloses at least two selectable targets displayed on at least a portion of the display, the examiner explaining that each window in Figure 5 represents each selectable target; that the two selectable targets are capable of being displayed in a simulated rotation about an axis while remaining continuously selectable during the simulated rotation (pointing to column 6, lines 1-10, of Goh); and that a cursor is capable of being displayed on the display, wherein a cursor controlled device capable of controlling the cursor's position and movement on the display is disclosed by Goh at column 4, lines 15-16.

Appellants argue that the claims require that each one of the selectable targets displayed "remains continuously" selectable during the simulated rotation, thus reducing wait time and facilitating use of the device because the options are always selectable.

We have reviewed the evidence before us, including the disclosure of Goh and the arguments of appellants and the examiner, and we conclude therefrom that the examiner has not established a prima facie case of anticipation.

The examiner makes a valiant effort to broadly interpret the instant claim language and apply the Goh reference thereagainst, by determining that Goh's windows 104 and 106, although only two of four windows depicted, constitute "at least two selectable targets displayed on said at least a portion of said display capable of being simultaneously displayed in a simulated rotation about an axis." With this much, we agree. Clearly, the windows in Goh are rotated about a vertical axis and at a point, as in Goh's Figure 5, windows 104 and 106 are simultaneously displayed on a portion of the display. Also, windows 104 and 106 clearly constitute "at least two selectable targets." The problem with the examiner's analysis, as we view it, is that the independent claims require "all of said at least two selectable targets . . . capable of being simultaneously displayed." All of Goh's targets constitute four windows, not merely windows 104 and 106. Now, the examiner's interpretation of windows 104 and 106 being "all of at least two selectable targets . . ." is reasonable, as far as it goes. However, the claims further require that "each one of said all of said at least two selectable targets displayed on said at least a portion of said display remains continuously selectable during said simulated rotation."

If we take the examiner's interpretation and apply it to the claim language, windows 104 and 106, allegedly comprising "all of said at least two selectable targets . . .," is displayed simultaneously at some point in the rotation, but when windows 104 and/or 106 are no longer in the forefront, during other points in the rotation, they are no longer selectable. Therefore, if we interpret windows 104 and 106 of Goh as the examiner wishes us to interpret them, these targets do not "remain continuously selectable during said simulated rotation," as required by the claims.

If we interpret all four of Goh's windows, in Figure 5, as being the "at least two selectable targets . . .," there will always be at least two of these four targets "continuously selectable," as claimed, but they cannot all be "simultaneously displayed in a simulated rotation," as also required by the claims.

The examiner's view is that where the two back windows in Goh are overlapped, windows 104 and 106 are represented for users to select, and when the two back windows are in the front and windows 104 and 106 are rotated to the back, then the two erstwhile back windows are now in the front for users to select. Therefore, concludes the examiner, the system of Goh always provides at least

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two windows for a user to select continuously during said simulated rotation (see pages 8-9 of the answer). The problem with this part of the examiner's analysis is that, according to the instant claim language, we must be talking about the same "at least two selectable targets" that are "simultaneously displayed" and remain "continuously selectable" during the rotation. The examiner's analysis switches the windows constituting the "at least two selectable targets" depending on which two of Goh's windows are in the forefront. This is not reasonable in view of the instant claim language.

Accordingly, Goh cannot anticipate the instant claimed subject matter, and we will not sustain the rejection of claims 1-3, 5-7, 10-16, 18-20, 23-29, 31-33, 36-42, 44-46, and 49-76 under 35 U.S.C. § 102(b) as anticipated by Goh.

We also will not sustain the rejection of claims 4, 17, 30, and 43 under 35 U.S.C. § 103 because these claims depend from independent claims 1, 14, 27, and 40, and Nielsen does not provide for the deficiencies of Goh, noted supra, the examiner merely

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relying on Nielsen for a teaching of an interface being capable of displaying additional information associated with a specific target when the cursor is positioned at least partially within the specific target's hotspot boundary.

Accordingly, the examiner's decision is reversed.

REVERSED

JAMES D. THOMAS)
Administrative Patent Judge)
KENNETH W. HAIRSTON)
Administrative Patent Judge)
ERROL A. KRASS)
Administrative Patent Judge)
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